

Opinions for the week of September 8 – September 11, 2020

Anthony Mays v. Thomas Dart No. 20-1792

Argued August 18, 2020 — Decided September 8, 2020

Case Type: Prisoner

Northern District of Illinois. No. 20-cv-2134 — **Matthew F. Kennelly**, *Judge*.

Before SYKES, *Chief Judge*, and BRENNAN and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Plaintiffs—a class of detainees at the Cook County Jail—brought this action against Cook County Sheriff Thomas Dart after the Jail reported an outbreak of COVID-19, the disease caused by the novel coronavirus that has sparked a global pandemic. Plaintiffs contend that the Sheriff has violated their Fourteenth Amendment Due Process rights by failing to provide them with reasonably safe living conditions as the pandemic rages. Plaintiffs seek various forms of relief, including an injunction requiring the Sheriff to implement certain procedures related to social distancing, sanitation, diagnostic testing, and personal protective equipment (“PPE”) to protect them from the virus for the duration of the pandemic....We conclude that, in the course of its analysis regarding double celling and group housing, the district court committed three distinct legal errors: the district court failed to consider the Sheriff’s conduct in its totality, failed to afford proper deference to the Sheriff’s judgment in adopting policies necessary to ensure safety and security, and cited an incorrect legal standard when evaluating the likelihood that Plaintiffs’ claims will succeed on their merits. Given these legal errors in evaluating the likelihood of success on the merits of Plaintiffs’ claims, we reverse the district court with respect to the portion of the preliminary injunction mandating socially distanced housing. Regarding the remaining relief, however, the district court made detailed factual findings, properly considered the Sheriff’s conduct in its totality, and closely tailored the relief it ordered to the guidelines promulgated by the Centers for Disease Control and Prevention (“CDC”). We therefore affirm all other aspects of the preliminary injunction.

David Zawistowski v. Michael Kramer No. 19-3074

Submitted August 26, 2020 - Decided September 8, 2020

Case Type: Civil

Central District of Illinois. No. 18-2255 — **Colin S. Bruce**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C.

BARRETT, *Circuit Judge*.

ORDER

David Zawistowski is dissatisfied with the outcome of a child-support and child custody dispute in state court. In this federal suit, his second against the judge who presided over the state court’s proceedings, he accuses the judge, a mediator, his children’s mother, and both parties’ lawyers of conspiring to violate his constitutional rights and several state laws. See 42 U.S.C. §§ 1983, 1985. The district court dismissed his complaint, ruling that the judge and mediator were immune from suit and that it lacked jurisdiction over his other claims. We affirm the judgment with one modification.

USA v. Roland Pulliam No. 19-2162

September 8, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 16-cr-328 — **Sara L. Ellis**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; KENNETH F. RIPPLE, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

The opinion issued in this case on September 3, 2020, is hereby AMENDED as follows: At line three of the second full paragraph on page seven of the slip opinion the word “affects” is stricken and replaced with the phrase: “does not affect”.

Deon Patrick v. City of Chicago No. 18-2759

Argued September 13, 2019 — Decided September 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 3658 — **Ronald A. Guzmán**, *Judge*.

Before SYKES, *Chief Judge*, and BAUER and ROVNER, *Circuit Judges*.

SYKES, *Chief Judge*. Deon Patrick was convicted of double murder in 1995 and sentenced to life in prison. The convictions were vacated in 2014 and Patrick was released. The Cook County Circuit Court issued a certificate of innocence, see 735 ILL. COMP. STAT. 5/2-702, and Patrick then filed suit for wrongful conviction against seven Chicago police officers and two prosecutors who investigated and prosecuted him. He alleged several constitutional claims under 42 U.S.C. § 1983 and state-law claims for malicious prosecution and civil conspiracy. The City of Chicago, also a defendant, stipulated to liability if any of its officers were found responsible for violating Patrick’s rights. A jury exonerated the prosecutors and one officer but found six officers liable and awarded more than \$13 million in compensatory damages and punitive damages in varying amounts. The defendants raise several errors on appeal. First, they claim that the district judge should have dismissed the case as a sanction for Patrick’s acknowledged perjury during discovery. Second, they challenge the judge’s decision to admit the certificate of innocence at trial, arguing that it was unfairly prejudicial, either alone or in combination with certain statements by Patrick’s lawyer during closing argument. Finally, they point to an error in the jury instruction on Patrick’s due-process claim. We affirm. The judge’s ruling on the sanctions question was a reasonable exercise of his discretion, and it was not improper to admit the certificate of innocence into evidence at trial. The jury instruction contained an error, but it was harmless under the circumstances of this case.

Nfor Tandap v. William Barr No. 20-1193

Submitted September 2, 2020 — Decided September 9, 2020

Case Type: Agency

Board of Immigration Appeals.

Before DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Nfor Gibson Tata Tandap, an Anglophone citizen of Cameroon, challenges the denial of his motion to reopen his removal proceedings to seek asylum, withholding of removal, and relief under the Convention Against Torture. He sought reopening based on a material change in country conditions since his last hearing—namely the conflict between Anglophone Cameroonians and the Francophone majority that had killed thousands of Anglophone citizens and led to the displacement of hundreds of thousands more. The Board of Immigration Appeals denied the motion, finding that Tandap had demonstrated changed conditions but did not submit enough evidence to show that he would be singled out for harm if returned. Tandap has petitioned for review, asserting that the Board applied the wrong legal standard, ignored evidence, and failed to acknowledge his claim for relief under the Convention Against Torture....Although we conclude that the Board abused its discretion, “[w]e take no position on the merits of the motion to reopen. The only ground of our decision is the Board’s failure to articulate a reasoned response to the motion.” *Boika*, 727 F.3d at 741 (quoting *Mekhael v. Mukasey*, 509 F.3d 326, 328 (7th Cir. 2007)). Accordingly, we GRANT the petition for review, VACATE the Board’s decision, and REMAND for further proceedings consistent with this order.

A.F. Moore & Associates, Inc. v. Charles Kocoras No. 20-2497

Submitted August 31, 2020 — Decided September 10, 2020

Case Type: Original proceeding

Northern District of Illinois, Eastern Division. No. 1:18-cv-4888 — **Charles P. Kocoras**, *Judge*.
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

PER CURIAM. In January, we reversed the dismissal of an equal-protection suit brought by a group of taxpayers challenging Cook County's pre-2008 property tax assessments. The district court had determined that it lacked jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341, because Illinois offered the taxpayers a "plain, speedy and efficient remedy." We disagreed. Based on the defendants' own concessions, we held that Illinois's procedures left these taxpayers no remedy at all for their claims, let alone a speedy and efficient one—the taxpayers had been litigating in state courts for a decade. *A.F. Moore & Assocs., Inc. v. Pappas*, 948 F.3d 889, 896 (7th Cir. 2020). The defendant officials petitioned for rehearing and rehearing en banc, but no member of the court voted to rehear the case. Our mandate issued on April 17, and the case returned to the district court for further proceedings. There have been no further proceedings. On June 9, the day before the defendants were to answer the complaint, the defendants filed two motions seeking a stay of the case pending the resolution of a petition for a writ of certiorari that they planned to submit in September. They filed the first motion in this court, asking that we recall our mandate and stay its reissuance. See FED. R. APP. P. 41(d). We summarily denied their request....The taxpayers now petition for a writ of mandamus, asserting that the district court exceeded its authority when it entered the stay. A writ of mandamus is an extraordinary remedy, not lightly invoked, but it is available in an appropriate case for a litigant who can show that it has no other adequate means to attain relief to which it is clearly entitled. *Cheney v. U.S. District Court*, 542 U.S. 367, 380–81 (2004); *In re CFTC*, 941 F.3d 869, 872 (7th Cir. 2019). This is such a case....Our mandate did not obligate the court to rush to final judgment before September ends. Still, a district court can exercise its inherent authority only consistent with our mandate and our mandate foreclosed a stay pending certiorari. As we have already noted, countless district courts have drawn this very line as the outer limit of their authority. See, e.g., *In re Servotronics, Inc.*, No. 2:18-MC00364-DCN, 2020 WL 3051247, at *3 (D.S.C. June 8, 2020); *United States v. Sample*, No. CR 15-4265 JCH, 2018 WL 6622198, at *3 (D.N.M. Dec. 18, 2018); *Lentz*, 352 F. Supp. 2d at 727–28. The district court here relied only on the pending petition for a writ of certiorari to grant the stay that we had already denied. That order was incompatible with the clear spirit of our mandate and must be vacated. PETITION GRANTED; MANDAMUS ISSUED.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).